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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,076	02/01/2001	Shantanu Sarkar	062891.0470	9446

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EXAMINER

VINCENT, DAVID ROBERT

ART UNIT	PAPER NUMBER
2661	<i>A</i>

DATE MAILED: 07/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/776,076

Applicant(s)

SARKAR ET AL.

Examiner

David R Vincent

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,7-10,12-14,17-21,24,27-31,34,38,40-43,45 and 47 is/are rejected.
- 7) ☒ Claim(s) 3,4,6,11,15,16,22,23,25,26,32,33,35-37,39,44,46 and 48 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3</u> . | 6) <input type="checkbox"/> Other: ____. |

Claim 12 specifies the phrase "operable to" and it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 7, 12-14, 17, 24, 27, 34, 40, and 45 are rejected under 35 U.S.C. 102(e) as being anticipated by Gummalla (US 2002/0064169).

Gummalla discloses detecting if a media stream becomes inactive (silence bit, section 25; VAD, section 26), deleting all but one stream (section 28), terminating last media stream (when call is complete, on-hook is detected calls do not last an infinite amount of time and are terminated sooner or later or see claim 2), establishing a session between a call resource

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(bandwidth, channels, queues, CAC, section 23) and a plurality of devices (plurality of users channels, section 28), and determining if call manager becomes unavailable (using CAC the CMTS knows if resources are available and if all devices involved in setting up a call are available, section 23, or 32; this is what CAC does and how calls are set up), notify user that call is being terminated (this is part of any call disconnect procedure, e.g. sending what is known as an on-hook or call complete type message, and Gummalla discloses using CAC call set up procedures, and call delete, Fig. 2B), a media processor (CAC device, section 23), a DSP (in CMTS or in cable modem), a call manager (can be any controller, microprocessor, or CMTS device that is involved with managing the calls, section 23), and mixing stream (e.g., section 25).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 8-10, 18-21, 28-31, 38, 41-43, 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gummalla as set forth above in view of Wilson (US 6,141,533).

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However, Gummalla fails to particularly call for prompting a user to speak when inactivity is detected.

Wilson discloses prompting the users to speak when inactivity is detected (sending a polling message to get the subscriber to respond, cols. 8-10, especially col. 9, lines 1-12).

It is obvious that since Gummalla discloses detecting inactivity, capacity needs of the system (section 27), and using CAC to assure that resources are currently available (section 23) that Gummalla would want to conserve on resources and drop calls that are inactive. However, end users would be very upset if their calls kept getting dropped just because on activity was detected for a short time. The examiner takes official notice that it is well known to prompt users when a session has been inactive and to ask the users if they want to keep the connection open. Wilson polls users in a voice environment to respond and the examiner considers this a teaching to prompt users to speak. It would have been obvious to prompt users to speak so that resources can be made available as soon as possible without upsetting the voice customer.

5. Claims 3-4, 6, 11, 15-16, 22-23, 25-26, 32-33, 35-37, 39, 44, 46, 48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form


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including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David R Vincent whose telephone number is 703 305 4957. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas Olms can be reached on 703 305 4703. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David R Vincent
Primary Examiner
Art Unit 2661

June 28, 2004